IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2162 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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NAGJIBHAI BHANJIBHAI GOSARA - Appellant(s)
Versus
MUKESH VASNATBHAI BHALARA & 1 - Defendant(s)

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Appearance :
MR KISHOR M PAUL for Appellant(s) : 1,
NOTICE SERVED for Defendant(s) : 1 - 2.
MR DAKSHESH MEHTA for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 22/08/2006

ORAL JUDGMENT

1. By way of this appeal the appellant has challenged the judgement and award dated 13.06.2002 passed by Motor Accident Claims Tribunal, Rajkot in M.A.C.P. No. 2434 of 2000 whereby the same was dismissed.

2. The short facts of the case are that the appellant had met with an accident on 03.11.2000 at about 07.00 p.m. near old Octroi Gate at Sant Kabir Road, Rajkot with Scooter No. GJ-3-BB-9425 driven by Respondent No. 1. As a result of this accident the appellant had received fracture in right leg and was treated as indoor patient.

2.1 Thereafter the appellant had filed M.A.C.P. No. 2434/2000 in Motor Accident Claims Tribunal, Rajkot against the Respondents for compensation of Rs. 2,00,000/-. Along with the said application the appellant had filed application under Section 140 of the Motor Vehicle Act for getting interim compensation of Rs. 25,000/-. The said application below Exh. 7 was rejected by Tribunal vide dated 13.06.2002.

3. Mr. Kishor M Paul, Learned advocate for the appellant has submitted that the Tribunal has seriously erred by not appreciating judgements cited relating that if vehicle involved is mentioned in chargesheet in that case interim compensation should be awarded. The learned advocate has relied upon the decision of this Court in the case of ***New India Assurance Co. Ltd. And another Vs. Dahyaben Jayantilal Panchal and others reported in 2000 ACJ 957*** to substantiate his contention. In the case of New India Assurance Co. Ltd. (Supra) it is held that on basis of the chargesheet it can be held that the vehicle was involved in the accident and insurance company is liable under no fault liability. It is clear from the chargesheet that the vehicle in question is involved in the accident. Therefore the claimant is entitled for

interim compensation.

4. In the premises aforesaid the appeal is allowed. The claimant shall be entitled for an amount of ***Rs. 25,000/-*** along with ***6%*** interest from the date of application till realisation. It is made clear that the claimant shall be allowed to withdraw Rs. 10,000/- and the balance amount of Rs. 15,000/- shall be kept in Fixed Deposit and the periodical interest shall be paid to the claimant. No order as to costs. R & P to be sent back forthwith.

(K.S.JHAVERI, J.)

Suresh*